

BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO

In the Matter of the Protest of)	
)	DOCKET NO. 18601
[REDACTED],)	
)	DECISION
Petitioner.)	
_____)	

On March 1, 2005, the Revenue Operations Division (RevOp) of the Idaho State Tax Commission denied a request by [Redacted] (taxpayer) for refund of Idaho individual income tax in the amount of \$80 for the period ending December 31, 2000.

The taxpayer filed a timely protest and petition for redetermination of the refund denial. The Tax Commission has reviewed the file, is advised of its contents, and hereby issues its decision.

On December 21, 2004, the Tax Commission received the taxpayer's 2000 Idaho individual income tax return. Because the time for claiming the refund reflected in that return had expired, a letter was sent to the taxpayer informing her of the adjustment to deny the refund. The taxpayer objected to the intended action, and a certified notice was sent to allow her the opportunity for administrative review. Her file was transferred to the Legal/Tax Policy Division for the Commission's review.

In her letter of protest, the taxpayer said: "I feel that I should have the same amount of time to file for a refund that the tax commission can audit me for. Since there is no penalty for filing late for refunds I wasn't worried about getting them done in a speedy time frame."

Idaho Code provides for a limit on the time a taxpayer has to claim a credit or refund as follows:

63-3072. Credits and refunds. (a) Subject to the provisions of subsections (c) and (g) of this section, where there has been an overpayment of the tax imposed by the provisions of this chapter, the amount of such overpayment shall be credited against any tax

administered by the state tax commission which tax is then due from the taxpayer, and any balance of such excess shall be refunded to the taxpayer.

(b) The state tax commission is authorized, and the state board of tax appeals is authorized to order the state tax commission in proper cases, to credit, remit, refund, or pay back all tax, penalties, and interest, erroneously or illegally assessed or collected, regardless of whether the same have been paid under protest, which claim for refund shall be certified to the state board of examiners by the state tax commission.

(c) Except as provided in subsection (e) of section 63-3035, Idaho Code, a claim for credit or refund of tax, penalties, or interest paid shall be made within the later of three (3) years of the due date of the return, without regard to extensions, or three (3) years from the date the return was filed. However, with regard to remittances received with an extension of time to file, or a tentative return, a claim for credit or refund of such remittances shall be made within three (3) years from the due date of the return without regard to extensions. (Emphasis added.)

Idaho Code § 63-3035(e) states:

(e) Amounts deducted from wages of an employee during any calendar year in accordance with the provisions of this section shall be considered to be in part payment of the tax imposed on such employee for his tax year which begins within such calendar year and the return made by the employer under this subsection (e) shall be accepted by the state tax commission as evidence in favor of the employee of the amount so deducted from his wages. Where the total amount so deducted exceeds the amount of tax on the employee, based on his Idaho taxable income, or where his income is not taxable under this chapter, the state tax commission shall, after examining the annual return filed by the employee in accordance with this chapter, but not later than sixty (60) days after the filing of each return, refund the amount of the excess deducted. **No credit or refund shall be made to an employee who fails to file his return, as required under this chapter, within three (3) years from the due date of the return, without regard to extensions, in respect of which the tax withheld might have been credited. In the event that the excess tax deducted is less than one dollar (\$1.00), no refund shall be made unless specifically requested by the taxpayer at the time such return is filed. (Emphasis added.)**

Idaho law provides for a credit or refund of any overpayment; however, the claim for the

credit or refund must be made within a certain timeframe. The Tax Commission did not get the taxpayer's claim for a refund until the taxpayer's return was received on December 21, 2004. Unfortunately, the time allowed for claiming the 2000 refund expired on April 15, 2004.

Idaho Code provides for a limit on the time the Tax Commission has to notify a taxpayer of a determination of tax due as follows:

63-3068. Period of limitations for issuing a notice of deficiency and collection of tax. (a) Except as otherwise provided in this section, **a notice of deficiency, as provided in section 63-3045, Idaho Code, for the tax imposed in this chapter shall be issued within three (3) years from either the due date of the return, without regard to extensions, or from the date the return was filed, whichever is later.**

(b) If an assessment has been made as provided in this chapter, then such tax shall be collected either by levy, or by a proceeding brought in court, within a period of six (6) years from the date of assessment of the tax and provided, further, that this shall not be in derogation of any of the remedies elsewhere provided in this chapter.

(c) In the case of a fraudulent return or a false return with the intent to evade the tax imposed in this chapter, or a willful attempt in any manner to defeat or evade the tax imposed in this chapter, a notice of deficiency may be issued, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(d) **In the case of a failure to file a return, for any reason, a notice of deficiency may be issued, the tax imposed in this chapter may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.**
(Emphasis added.)

A three-year time restriction is placed on the Tax Commission for the notification of an under payment of tax just as a three-year time restriction is placed on a taxpayer for claiming a credit or refund of any over-payment of tax.

Idaho Code §§ 63-3072 and 63-3035 are clear and unequivocal. The language in these sections “shall be made. . .” is not discretionary, but rather, it is mandatory. The Tax Commission finds Idaho Code § 63-3072(c), cited above, is controlling with respect to the taxpayer’s refund claim for tax year 2000. No credit or refund can be given.

WHEREFORE, the Notice of Deficiency Determination directed to [Redacted], dated March 1, 2005, that denies the taxpayer a refund is APPROVED, AFFIRMED, and MADE FINAL.

An explanation of the taxpayer’s right to appeal this decision is enclosed with this decision.

DATED this ____ day of _____, 2005.

IDAHO STATE TAX COMMISSION

COMMISSIONER

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that I have on this ____ day of _____, 2005, served a copy of the within and foregoing DECISION by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[REDACTED]
[Redacted]
[REDACTED]

[Redacted]

[Redacted]
